

June/2006

International Adoption – MALAYSIA

DISCLAIMER: The information in this circular relating to the legal requirements of specific foreign countries is provided for general information only. Questions involving interpretation of specific foreign laws should be addressed to foreign legal counsel. Questions involving interpretation of U.S. immigration and orphan requirements should be addressed to the U.S. Bureau of Citizenship and Immigration Services.

PLEASE NOTE: Adoptions are not common in Malaysia. Adoptions of non-relatives are generally difficult and the procedures relating to such adoptions can be time-consuming. Prospective parents may be required to remain in Malaysia for two or more years during the process. Pursuant to the laws of Malaysia, prospective adoptive parent(s) who are non-Muslims may not adopt Muslim children.

Rules and regulations relating to the adoption of a child in the East Malaysian state of Sarawak are different from those applicable in other Malaysian states. The procedures for Sarawak are detailed in a separate section within this circular.

GENERAL: The following is a guide for American citizens who are interested in adopting a child in Malaysia and applying for an immigrant visa for the child to come to the United States. This process involves complex foreign and U.S. legal requirements. U.S. Bureau of Citizenship and Immigration Services and consular officers give each petition careful consideration on a case-by-case basis to ensure that the legal requirements of both countries have been met for the protection of the prospective adoptive parents, the biological parents and the child. Interested American citizens are strongly encouraged to contact American consular officials at the U.S. Embassy in Kuala Lumpur, Malaysia before formalizing an adoption agreement to ensure that appropriate procedures have been followed, which will make it possible for the U.S. Embassy to issue a U.S. immigrant visa for the child.

AVAILABILITY OF CHILDREN FOR ADOPTION: Recent U.S. immigrant visa statistics reflect the following pattern for visa issuance to orphans (IR-3 and IR-4 visas combined)*:

FY-2005....1
FY-2004....1
FY-2003....2
FY-2002....2
FY-2001....0
FY-2000....1

*Immediate Relative (IR)-3 visas are issued to orphans adopted in Malaysia. IR-4 visas are issued to orphans adopted or re-adopted in the United States.

(A) MALAYSIAN ADOPTION AUTHORITY:

The government office responsible for adoptions in Malaysia is:

The Family and Children's Division
 Social Welfare Department
 Ministry of National Unity and Social Development
 21-23rd Floor, Menara Tun Ismail Mohd Ali
 Jalan Raja Laut
 50562 Kuala Lumpur, Malaysia.
 Telephone Number: (60) (3) 2616-5802-General Line
 Adoption: (60) (3) 2616-5865
 E-mail: rosmaini@jkm.gov.my.

(B) MALAYSIAN AGE AND CIVIL STATUS REQUIREMENTS:

The adoptive parent must be an “ordinary resident” in Malaysia—i.e., already have been working and living in Malaysia for at least two years prior to the application. One of the prospective parents in non-Muslim adoptions must be at least 25 years old and at least 21 years older than the child. If the prospective adoptive parent is a relative of the child, s/he must be at least 21 years old. One of the prospective parents in Muslim adoptions must have attained the age of 25 and be at least 18 years older than the child. If the prospective adoptive parent is a brother, sister, uncle or aunt of the child, he/she must be at least 21 years old.

(C) RESIDENCY REQUIREMENTS:

Peninsular Malaysia – Adoptive parents must be “ordinarily resident” meaning they must be either permanent residents or have valid Malaysian work permits. In order to qualify for this status, they must have at least 12 months residency.

Sabah – The prospective adoptive parents must be resident in Malaysia for at least 2 years.

Sarawak – The prospective adoptive parents should be resident in Sarawak, either holding a work permit or a resident permit.

(D) TIME FRAME: Overall, it takes about 6 months to one year to finalize a case from the time a child is matched with a family for adoption.

(E) ADOPTION AGENCIES AND ATTORNEYS: Prospective adoptive parents are advised to fully research any adoption agency or facilitator they plan to use for adoption services. For U.S. based agencies, it is suggested that prospective adoptive parents contact the Better Business Bureau and licensing office of the Department of Health and Family Services in the state where the agency is located. There are no recognized adoption agencies in Malaysia. All adoption inquiries should be directed to the Social Welfare Department, Ministry of National Unity and Social Development at the above address.

Please see [Important Notice Regarding Adoption Agents and Facilitators](#) at the Web site for the Bureau of Consular Affairs at <http://travel.state.gov>.

(F) HOST COUNTRY FEES: In Peninsular Malaysia, the processing fee at the High Court is 30 Malaysian Ringgits (RM). Since most of the cases will go through a lawyer, another adoption cost will be the lawyer's fees range from RM2,000 (US\$526) to RM10,000 (US\$3,800)

(G) MALAYSIAN ADOPTION PROCEDURES:

Non-Muslim Adoptions

The adoption of a non-Muslim child is governed by the Adoption Acts, 1952 (Act 257). The identification of a prospective child may occur privately through friends or relatives in Malaysia or through the Malaysian Social Welfare Department. Once the child has been identified, the prospective adoptive parent must obtain a statutory declaration (notarized affidavit) from the natural parent(s) relinquishing all parental rights towards the child. The prospective adoptive parent notifies in writing the Social Welfare Department of the Malaysian state in which he/she is resident of his/her intention to apply for an adoption order for the child. If the child was identified by the Social Welfare Department, an "offer" letter will be issued to the adoptive parent. In both instances, the adoptive parent(s) must reside with and care for the child not less than three consecutive months before petitioning at the Sessions Court or the High Court for the adoption order.

When an application for an adoption order is made, the Court appoints a guardian *ad litem* for the child. In most cases, the court will appoint a Social Welfare office employee. To safeguard the interests of the child before the Court, the guardian *ad litem* investigates the background and circumstances of the child and the adoptive parent(s), including all matters relevant to the proposed adoption. The completed guardian *ad litem* report is submitted to the Court on the day of the hearing.

The Court may issue an adoption order or an interim order awarding custody of the child to the adoptive parent(s) for a probationary period of not less than six months and not exceeding two years, subject to provisions for the maintenance, education and supervision of the welfare of the child.

The Registrar of the Court sends a certified copy of the adoption decree to the Registrar-General at the National Registration Department and to the adoptive parent(s) within seven days. The Registrar-General enters the adoption order in the Adopted Children Register. The Register entry serves as the child's official record in lieu of the original birth certificate. The adoptive parent may apply for a copy through the Registrar-General at:

National Registration Department
Tingkat 1, bangunan Persekutuan
Persiaran Barat
Jalan Sultan
46551 Petaling Jaya, Selangor
Phone: (60) (3) 7956-2634

Muslim Adoptions

Only prospective adoptive parents who are Muslims may adopt Muslim children. The adoption of a Muslim child in Malaysia is governed by the Registration of Adoptions Act of 1952 and relevant Syariah (Sharia) laws. A prospective child may be identified privately or through the Social Welfare Department. A court petition is not required. The Muslim prospective adoptive parent applies to the National Registration Department to document the child as his/her adopted child. To qualify, the adoptive parent must have resided with and had continuous custody of the child for a period of not less than two years. The application should include evidence relating to the care, maintenance, and education of the child during the two years from the date of the natural parents' statutory declaration (notarized affidavit) relinquishing all parental rights of the child. Alternatively, if the Social Welfare Department places the child, the date of the offer letter begins the co-residency and custody period.

If the National Registration Department is satisfied with the evidence submitted, an entry will be made in the Register and a certified copy of the entry delivered to the adoptive parents. If the Registration Department is not satisfied with the evidence, an officer from the Social Welfare Department will conduct an investigation into the well being of the child.

ADOPTION IN THE MALAYSIAN STATE OF SARAWAK:

Rules and procedures relating to adoption of a child in the East Malaysian state of Sarawak are different from those applicable in other states of Malaysia. Prospective American citizen adoptive parents contemplating adoption in Sarawak are advised to exercise extreme caution and should expect delays and no guarantee of approval for a U.S. immigrant visa for the adopted child.

Sarawak Adoption Ordinance (Amended) 2002

The adoption of a child born in Sarawak is governed by the Sarawak Adoption Ordinance (Amended) 2002. According to the Ordinance, prospective adoptive parents must be at least 21 years of age or at least 21 years older than the child to be adopted. If there are two adopting parents, one of the adopting parents should have a "Sarawak connection." "Sarawak connection," as defined in the Ordinance means, either (i) a person who is born in Sarawak or is permanently residing in Sarawak or (ii) is domiciled in Sarawak. If neither parent has a "Sarawak connection," the parents must obtain a statement from the U.S. Embassy in Kuala Lumpur attesting that the Embassy is aware of the adoptive parents' intention to adopt a child from Sarawak and that the child, upon being adopted, will be permitted to immigrate to the United States. The Embassy will issue this statement only if the special procedures described below have been followed. With the statement issued by the U.S. Embassy in Kuala Lumpur, prospective parents may then travel to Sarawak to file the statement with the appropriate District Officer who has authority to issue adoption certificates. Both parents must be present at the Office of the District Officer for the certificate to be issued.

Additional Procedures Applicable to Adoption of Children from Sarawak

First, adoptive parents must follow all of the procedures described below under the heading "U.S. Immigration Procedures." The U.S. Embassy in Kuala Lumpur and the Bureau of Citizenship and Immigration Services (BCIS) give additional scrutiny to adoptions in Sarawak.

BCIS and the Embassy require DNA testing in all cases where the child is being released by an identifiable birth mother in order to confirm the parental relationship. DNA testing must be performed by one of the laboratories in the United States approved by BCIS. The samples necessary for the test are to be taken only by physicians designated by the Embassy to conduct medical exams for immigrant visa purposes. Fees for DNA analysis differ among laboratories. In order to meet the DNA testing requirement, prospective parents should contact the BCIS office nearest to their residence to obtain a list of the approved laboratories. They may then travel to Sarawak to locate the child and the biological mother.

The adoptive parents and the biological mother of the child to be adopted must personally appear at the U.S. Embassy in Kuala Lumpur for an interview with a consular officer. The biological mother will be required to execute a statement irrevocably releasing the child for adoption. She will also be required to submit to DNA testing with an Embassy-approved physician who will forward the testing sample to an approved laboratory to confirm the biological relationship between the mother and child. The Embassy can only issue a statement addressed to the Sarawak District Officer regarding the adoption after the laboratory confirms the biological relationship between the mother and child and finds the I-600 petition to be “clearly approvable.” If the Embassy is unable to issue such a statement (e.g., if the biological mother cannot be identified and the child’s status as an orphan cannot be established) the case would be referred to the BCIS office in Bangkok.

(H) MALAYSIAN DOCUMENTARY REQUIREMENTS:

The prospective adoptive parent must present his/her valid international passport, the original birth certificate of the adoptive child and notarized letters of consent from the biological parents.

Please note that Malaysia is not a party to the Hague Convention for Legalization of Foreign Documents.

DOCTORS: The U.S. Embassy in Kuala Lumpur maintains a current list of doctors and laboratories necessary for medical examinations.

MALAYSIAN EMBASSY IN THE UNITED STATES:

3516 International Court, NW
Washington, D.C. 20008
Tel: (202) 572-9700
Fax: (202) 483-7661
E-mail: malwashdc@kln.gov.my

Malaysia also maintains consulates in New York and Los Angeles.

U.S. EMBASSY IN MALAYSIA:

376 Jalan Tun Razak, 50400 Kuala Lumpur.
Tel: (6) (03) 2168-5000
Fax: (6) (03) 2148-5801
E-mail: klconsular@state.gov

AUTHENTICATION PROCESS: All U.S. documents submitted to the Malaysian government, such as birth, death, and marriage certificates, must be authenticated. The authentication process begins by obtaining the seal of a U.S. notary public or the appropriate document issuing office. The seal is authenticated by the clerk of court in the county where the notary is licensed or by a similar authority. The document must then be authenticated by your state's Secretary of State, and then by the U.S. Department of State Authentication Office (518 23rd Street, NW, State Annex 1, Washington, D.C., tel. (202) 647-5002, or 1-800-688-9889, choose item 6. Walk-in service is available from 7:30 a.m. until 11:00 a.m. any workday. The fee is \$5.00 per document. Walk-in service is available from the Authentications Office from 8 a.m. to 12 noon Monday-Friday, except holidays. Walk-in service is limited to 15 documents per person per day (documents can be multiple pages). Processing time for authentication requests sent by mail is 5 working days or less.

After the Department of State has authenticated the documents, the Malaysian Embassy or Consulate having jurisdiction over the region where you live must authenticate the documents. Contact the nearest Malaysian Embassy or Consulate for specific information about Malaysian authentication of U.S. documents.

For additional information about authentication procedures, see the “Judicial Assistance” page of the Bureau of Consular Affairs Web site at <http://travel.state.gov>.

U.S. IMMIGRATION REQUIREMENTS

A child adopted by a U.S. citizen must obtain an immigrant visa before he or she can enter the U.S. as a lawful permanent resident. The child must be an orphan, as defined by U.S. immigration regulations. Children who do not qualify under this definition may not immigrate to the U.S. as an orphan even if legally adopted by a U.S. citizen. There are two distinct categories of immigrant visas available to orphans adopted by U.S. citizens. The two categories are Immediate Relative-3 (IR-3) and IR-4. An IR-3 is issued when a child is adopted under the laws of a foreign country. An IR-4 is issued when a child will be adopted in the United States. (That is, the American parents have custody of a child to take him or her to the United States to be adopted there.) An IR-4 is also issued when state pre-adoption requirements require that a child be adopted in that state or if both parents have not seen the child. **The Department of State encourages U.S. citizens to verify that a particular child is an orphan according to U.S. immigration law and regulations before proceeding with an adoption.**

An Orphan. If an adopted child has not resided with and been in the legal custody of the adoptive parent for at least two years (or if the child has not yet been adopted) the child must qualify under section 101(b)(1)(F) of the U.S. Immigration and Nationality Act in order to apply for an immigrant visa. The main requirements of this section are as follows:

- The child must be under the age of 16¹ at the time an I-600 Petition is filed with the Bureau of Citizenship and Immigration Services (BCIS) on his or her behalf.
- The child meets the U.S. immigration law definition of “orphan” either because:
 - (a) The child has no parents because of the death or disappearance of, abandonment or desertion by, or separation from or loss of both parents**; or
 - (b) The sole or surviving parent is incapable of providing proper care and has, in writing, irrevocably released the child for emigration and adoption
- The adopting parents must have completed a full and final adoption of the child (for IR-3) or must have legal custody of the child to take the child to the United States for emigration and adoption (for IR-4).

**Prospective adopting parents should note that the terms “disappearance of both parents,” “abandonment by both parents,” “desertion by both parents,” “separation from both parents,” and “loss from both parents” all have specific legal meanings defined in section 204.3(b) of Title 8 of the U.S. Code of Federal Regulations. Whether a child qualifies as an orphan under any of these categories is determined by reference to the U.S. regulatory definitions and not by any local (foreign) law designations that may be used to identify a child as orphaned.

The adopting parent(s) must meet the following BCIS requirements in order to file the I-600 petition for the immigrant visa for an adopted child:

- If the adoptive or prospective adoptive parent is married, his or her spouse must also be a party to the adoption;
- If the adoptive or prospective adoptive parent is single, he or she must be at least 25 years of age;
- The adoptive or prospective adoptive parent must be a U.S. citizen.

U.S. IMMIGRATION PROCEDURES FOR ORPHANS

The Petition

Adoptive and prospective adoptive parents must obtain approval of a *Petition to Classify Orphan as an Immediate Relative* (Form I-600) from the U.S. Bureau of Citizenship and Immigration Services (BCIS) before they can apply for an immigrant visa on behalf of an orphan. The adjudication of such petitions can be very time-consuming and parents are encouraged to begin the process well in advance.

A prospective adoptive parent may file Form I-600A *Application for Advance Processing of Orphan Petition* with the Bureau of Citizenship and Immigration Services (BCIS) office having jurisdiction over their place of residence. This form allows the most time-consuming part of the process to be completed in advance, even before the parent has located a child to adopt. In

¹ A child adopted at age 16 or 17 will also qualify, provided he or she is a natural sibling of a child adopted, or who will be adopted, under the age of 16 by the same adoptive parents.

addition, a parent who obtains an approved I-600A may file an I-600 in person at the U.S. Embassy in Kuala Lumpur, Malaysia.²

Documentary Requirements for the I-600A

- Approved Form I-600A (Application for Advance Processing of Orphan Petition),
- Fingerprints of each prospective adoptive parent on Form FD-258,
- Proof of the prospective petitioner's United States citizenship,
- Proof of the marriage of the prospective petitioner and spouse, if applicable,
- Proof of termination of any prior marriages of the prospective petitioner and spouse or unmarried prospective petitioner, if applicable,
- A "home study" completed by the appropriate State organization with a favorable recommendation,
- Filing fee of U.S. \$545.

The I-600 is filed at the U.S. Embassy in Kuala Lumpur, Malaysia after an adoptive parent has legal custody of a child. If an I-600A has already been approved, there is no fee. However, if parents are adopting two or more biologically unrelated children, there will be a \$545 fee for each additional child.

Documentary Requirements for the I-600

- Form I-600, Petition to Classify Orphan as an Immediate Relative,
- Proof of the orphan's age,
- Death certificate(s) of the orphan's parent(s), if applicable,
- Proof that the orphan's sole or surviving parent cannot give the orphan proper care and has, in writing, forever or irrevocably released the orphan for emigration and adoption, if the orphan only has one parent,
- A final decree of adoption, if the orphan has been adopted abroad,
- Proof that the orphan has been unconditionally abandoned to an orphanage, if the orphan is in an orphanage,
- Proof that the pre-adoption requirements, if any, of the state of the orphan's proposed residence have been met, if the orphan is to be adopted in the United States.

Detailed information about filing these forms can be found on the BCIS web site at www.immigration.gov. U.S. citizens who have adopted or hope to adopt a child from Malaysia should request, at the time they file these forms, that BCIS notify the U.S. Embassy in Kuala Lumpur, Malaysia as soon as the form is approved. Upon receipt of such notification, the Embassy will contact the adopting parent(s) and provide additional instructions on the immigration process. U.S. consular officers may not begin processing an orphan adoption case until they have received formal notification of approval from a BCIS office in the U.S.

It is important for adoptive parents to inform their local BCIS field office that they are actively processing an adoption and will soon be filing an I-600 petition in Malaysia. After the Malaysian adoption is finalized, adoptive parents may file the I-600 petition with the Consular

² If a married couple is adopting the child and only one of the parents will travel abroad from the U.S., that parent must be an American citizen. REMEMBER both parents must still sign the original I-600.

Section at the U.S. Embassy. Adoptive parents must have already filed an I-600A application with a BCIS office in the U.S. and had the application approved. Prospective parents should not travel to Malaysia to complete the adoption and file the I-600 until they have confirmed with the Embassy that it has received notification from BCIS that the I-600A has been approved.

The Orphan Investigation

One part of the petition process that BCIS cannot complete in advance is the "orphan investigation." **An orphan investigation *Form I-604 Report on Overseas Orphan Investigation* is required in all orphan adoption cases** - even if an I-600 has already been approved - and serves to verify that the child is an orphan as defined by U.S. immigration law. **A consular officer at the U.S. Embassy in Kuala Lumpur, Malaysia will conduct this investigation.**

REQUIREMENTS FOR THE IMMIGRANT VISA

After the I-600 petition is approved, adoptive parents must contact the Immigrant Visa Unit to schedule a visa interview. Parents should not make final, non-refundable travel plans until they have their child's visa in hand. A consular officer is required to review an adoption case carefully and make an independent determination of the child's eligibility for a visa. This includes another review of the orphan status of your child and the child's medical information. In the unlikely event a child will be receiving an IR-4 visa, financial information will be provided in the form of an I-864 Affidavit of Support. The child must be present at the Embassy for the immigrant visa interview.

In addition to the complete adoption file presented for the I-600, you will also need the following:

- A medical exam completed by a designated panel physician*
- The child's Malaysian passport
- One color photograph, full face against a white or off-white background, size 50mm x 50mm (2 inch x 2 inch), and write name on the reverse.
- \$380 for visa application and issuance fees (payable in cash only, U.S. or Malaysian currency).

*** The Panel Physician's examination is designed to comply with specific visa regulations, and is not intended to be a fully inclusive physical examination. If adoptive parents wish to consult a pediatrician for a more complete physical exam, or for any health problems, the Embassy can provide a current list of doctors and sources for medicines.**

U.S. EMBASSY IN KUALA LUMPUR, MALAYSIA:

As soon as prospective adoptive parents arrive in Malaysia, they should contact the Consular Section of the U.S. Embassy in order to register their presence in Malaysia. The Consular Section is located at: 376 Jalan Tun Razak, 50400 Kuala Lumpur.

NATURALIZATION: Under the Child Citizenship Act of 2000, which took effect February 27, 2001, children automatically become U.S. citizens when all of the following requirements have been met: at least one parent is a U.S. citizen; the child is under 18 years of age; there is a full and final adoption of the child; and, the child is admitted to the United States as an immigrant. A foreign-born child who enters the United States on an Immediate Relative IR-3 visa automatically becomes a U.S. citizen. A foreign-born child, who enters the United States on an IR-4 visa and is adopted in a U.S. court, will become a U.S. citizen when the adoption is finalized in the United States. (The child will be a legal permanent resident until then.) For further information, please consult with the consular section at the U.S. Embassy in Malaysia or the nearest office of the Bureau of Citizenship and Immigration Services. Additional information is available at www.travel.state.gov/childcitfaq.html

ADDITIONAL INFORMATION: Prospective adoptive parents are strongly encouraged to consult BCIS publication M-249, *The Immigration of Adopted and Prospective Adoptive Children*, as well as the Department of State publication, *International Adoptions*. The BCIS publication is available at: www.uscis.gov. Department of State publication can be found on the Bureau of Consular Affairs Web site under “International Adoptions” (see link below to return to International adoptions page).

QUESTIONS: Specific questions regarding adoption in Malaysia may be addressed to the Immigrant Visa Unit at the U.S. Embassy in Kuala Lumpur, Malaysia. Parents may also contact the Office of Children’s Issues, U.S. Department of State, CA/OCS/CI, and 2201 C STREET, NW, WASHINGTON, D.C. 20520-4818, **toll-free Tel: 1-888-404-4747** with specific questions.

Information is also available from several other sources:

- **Telephone** – The Overseas Citizens Services in the Bureau of Consular Affairs (CA/OCS) has established a toll free number for the general public **at 1-888-407-4747**. The staff can answer general inquiries regarding international adoption and will forward calls to the appropriate Country Officer. This number is available from 8:00 a.m. to 8:00 p.m. Eastern Standard Time, Monday through Friday (except U.S. federal holidays). Callers who are unable to use toll-free numbers, such as those calling from overseas, may obtain information and assistance during these hours by calling 1-317-472-2328.
 - State Department Visa Office - recorded information concerning immigrant visas for adoptive children, **(202) 663-1225**.
 - Bureau of Citizenship and Immigration Services - recorded information for requesting immigrant visa application forms, **1-800-870-FORM (3676)**.
- **Internet** - the Consular Affairs web site, <http://travel.state.gov>, contains international adoption information flyers and the “International Adoptions” brochure.
- **BCIS web site** – www.uscis.gov

Other information:

- **Consular Information Sheets** - The State Department has general information about hiring a foreign attorney and authenticating documents that may supplement the country-specific information provided in this flier. In addition, the State Department publishes Consular

Information Sheets (CIS) for every country in the world, providing information such as location of the U.S. Embassy, health conditions, political situations, and crime reports. If the situation in a country poses a specific threat to the safety and security of American citizens that is not addressed in the CIS for that country, the State Department may issue a Public Announcement alerting U.S. citizens to local security situations. If conditions in a country are sufficiently serious, the State Department may issue a Travel Warning recommending that U.S. citizens avoid traveling to that country. These documents are on the Internet at <http://travel.state.gov> or by calling the State Department's Office of Overseas Citizen Services at (202) 647-5225.

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IV-International Adoption Flyer Template